

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

John e. diehl,

Appellant,

v.

WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD, an
agency of the State of Washington, and
MASON COUNTY, a municipal corporation,

Respondent.

No. 33662-6-II

UNPUBLISHED OPINION

Hunt, J — John E. Diehl appeals the superior court’s dismissal of his appeal from a 2001 Western Washington Growth Management Hearings Board (Board) finding Mason County’s Comprehensive Plan (Plan) to be partially out of compliance with the Growth Management Act (GMA).¹ He argues that the superior court erred in dismissing his appeal as moot, after the County amended its Plan and after the Board found the Plan complied with its 2001 order. Diehl asserts that this order included issues that the County failed to address in its Plan amendments.

¹ Chapter 36.70A RCW.

Because Diehl has failed to perfect the record, we dismiss his appeal.

FACTS

I. 1996 Order and Appeal

In 1996, John E. Diehl challenged Mason County's Comprehensive Plan as non-compliant with the Growth Management Act. Diehl filed a petition for review with the Western Washington Growth Management Hearings Board, which determined that the County was not in compliance with the GMA.

The County sought judicial review. We affirmed the Board's decision in *Diehl v. Mason County*, 94 Wn. App. 645, 661, 972 P.2d 543 (1999).

II. 2001 Order and Appeals

Following a series of compliance hearings regarding the County's Plan, the Board issued administrative orders in January 1999, December 2000, and March 2001. In December 2000 order, the Board determined that the County had achieved only partial compliance.

A. First Appeal and Remand

Diehl appealed the Board's March 2001 order for compliance to the Mason County Superior Court, which dismissed his appeal for failure to serve the original petition properly. Our Supreme Court reversed the trial court's decision and remanded for a hearing on the merits. *Diehl v. Growth Mgmt. Hearings Bd.*, 153 Wn.2d 207, 219, 103 P.3d 193 (2004).

B. County's Revision of the Plan and Subsequent Board Order

While Diehl pursued judicial review of the Board's 2001 order, the County passed Ordinance 09-03, amending its Plan. The Board held additional GMA compliance hearings and

determined that the County's Plan amendments corrected the problems outlined in the 2001 order.

C. Superior Court Dismissal on Remand and Appeal

In May 2005, on remand from the Supreme Court, the superior court granted the County's motion to dismiss Diehl's appeal as moot, based on the County's interim amendment of the Plan and the Board's finding of GMA compliance.

On August 9, 2005, Diehl filed a notice of appeal with our court. He argues that his appeal is not moot because (1) the County's Plan amendments addressed only those issues that the Board had found to be non-compliant with the GMA in its 2001 order; and (2) the County did not amend its Plan to address those issues that the Board had found to be compliant, which issues Diehl had also challenged.

D. Deficient Appellate Record

In his Designation of Clerk's Papers (Designation), Diehl requested the Mason County Superior Court Clerk to transmit the following documents to our court: (1) Petition for Judicial Review of an Administrative Decision; (2) Petitioner's Brief; (3) Petitioner's Reply Brief; (4) Building Industry Association of Washington's Amicus Curiae Brief; (5) 1000 Friends of Washington Brief Amicus Curiae; (6) Mandate of the Supreme Court of Washington; (7) Mason County's Motion to Dismiss for Mootness; (8) Appellant's Response to Motion to Dismiss; (9) Memorandum Opinion (5/13/05); (10) Motion for Reconsideration; (11) Mason County's Response to Motion for Reconsideration; (12) Reply to County on Motion for Reconsideration; (13) Memorandum Opinion (7/8/05); and (14) Notice of Appeal. He did not designate the Board's 2001, for which he seeks our appellate review.

In addition to these designated clerk's papers, our clerk's office received the superior court's 2005 orders dismissing Diehl's appeal and denying his motion for reconsideration as well as copies of the Board's 2002 and 2003 compliance orders. We did not, however, receive a copy of the Board's 2001 order.

ANALYSIS

Diehl argues that the superior court erred in ruling that the issues he raised in his appeal of the Board's 2001 order are moot. Although the County's Plan amendments addressed aspects of the Plan that Board determined to be non-GMA-compliant, Diehl asserts that (1) he also appealed that portion of the Board's order finding other parts of the County's Plan to be GMA-compliant, (2) the County did not address these challenged parts in its subsequent Plan amendments, (3) the Board similarly did not address these challenged parts and the amended Plan's failure to comply with the GMA, and (4) therefore, the Board's 2001 order is still valid with respect to those parts of the original Plan that the Board found to be in compliance with the GMA.

Diehl's argument may well have merit. Nonetheless, we are unable to consider the substance of his claims because he has failed to supply an adequate record on appeal to permit our review.

The party seeking judicial review has the duty file with the superior court clerk and the appellate court clerk a designation of those clerk's papers and exhibits the party wants the trial court clerk to submit to the appellate court. RAP 9.6(a). At a minimum, the designated clerk's papers must include the following:

- (A) the notice of appeal;
- (B) the indictment, information, or complaint in a criminal case;
- (C) *any written order or ruling not attached to the notice of appeal, of which a*

party seeks review;

(D) the final pretrial order, or the final complaint and answer or other pleadings setting out the issues to be tried if the final pretrial order does not set out those issues;

(E) *any written opinion, findings of fact or conclusions of law;* and

(F) any jury instruction given or refused which presents an issue on appeal.

RAP 9.6(b) (emphasis added).

The appellant has the burden to provide an adequate record for the appellate court to review issues raised. And the superior court's decision must stand if the appellant fails to meet this burden. *State v. Tracy*, 128 Wn. App. 388, 394-95, 115 P.3d 381 (2005), *review granted*, 156 Wn.2d 1030 (2006); *see also State v. Rienks*, 46 Wn. App. 537, 545, 731 P.2d 1116 (1987).

Here, although our court received a copy of the superior court's 2005 order dismissing Diehl's appeal, Diehl failed to designate as a Clerk's Paper or to submit to us a copy of the Board's 2001 order—the underlying administrative order that the superior court reviewed in dismissing Diehl's appeal. It is this underlying administrative Board order on which Diehl bases his primary argument on appeal to us now. Without a copy of the Board's 2001 order, we cannot determine whether the superior court erred in dismissing Diehl's appeal based on its determination that the appeal raises moot issues.

We can affirm the superior court on any grounds. *Harberd v. City of Kettle Falls*, 120 Wn. App. 498, 508, 84 P.3d 1241, *review denied*, 152 Wn.2d 1025 (2004). Accordingly, we affirm the superior court's dismissal of Diehl's appeal based on his failure to provide an adequate record on appeal. Because without an adequate record, we are unable to consider Diehl's argument. We do not further consider whether Diehl's appeal of the Board's 2001 order raises moot issues. *See State v. Wade*, 138 Wn.2d 460, 465, 979 P.2d 850 (1999).

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Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Houghton, P.J.

Bridgewater, J.